In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1496

LOCAL 203, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO, PETITIONER

v.

THE COLONIAL PRESS, INC., AND NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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1. The Board found that The Colonial Press, Inc. (the Company) violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. 158(a)(1) and (3), by refusing to reinstate six strikers who had been lawfully discharged for misconduct[1] which the Company subsequently condoned (Pet. App. A17-A27). The Board ordered the Company, *inter alia*, to reinstate the six strikers with back pay (*id.* at A23-A24).

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[1]The six employees had been discharged for attending "long union meetings on company time"; thereafter they joined a strike called by the Union to protest unfair labor practices committed by the Company (Pet. App. A2).

The court of appeals, one judge dissenting, declined to enforce the Board's order. It concluded that the evidence did not support the Board's finding that the Company had condoned the strikers' misconduct, and that, in any event, the strikers were required, and had failed, to manifest that they had accepted the Company's alleged offer of reemployment (*id.* at A1-A15). An equally divided court denied the Union's[2] petition for rehearing *en banc* (*id.* at A16).

2. For the reasons set forth in Judge Lay's dissent (*id.* at A11-A15) and in the Union's petition for a writ of certiorari, the Board believes that the court of appeals erred in failing to enforce the Board's order in this case. The Board agrees, moreover, that the question whether unfair labor practice strikers forego their right to reemployment if they do not specifically manifest an acceptance of the employer's offer of reemployment is of importance in the administration of the Act. The Board did not file its own petition because, in its view, that question would not be reached unless this Court disagreed with the court of appeals' rejection (*id.* at A8-A10) of the Board's finding that the Company had in fact condoned the strikers' prior misconduct and offered them reemployment.[3] Should the Court grant the petition, however, the Board will support petitioner's position on the merits and defend its order.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

JULY 1975.

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[2]The Union, the charging party before the Board, had intervened in the court of appeals proceeding.

[3]As shown by Judge Lay (Pet. App. A12-A13, n. 1), there is ample support for the Board's condonation finding.